

**6 Official Opinions of the Compliance Board 92 (2009)**

**Exceptions Permitting Closed Session – Personnel matter, §10-508(a)(1)  
– Discussion of department audit outside the exception**

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The Open Meetings Compliance Board has considered your complaint alleging that the Annapolis City Council Finance Committee violated the Open Meetings Act on December 3, 2008, when it met in closed session to discuss an audit of the City's Finance Department. For the reasons explain below, we find that the Finance Committee violated the Open Meetings Act when it provided for a management audit subject to a maximum cost as part of a meeting closed to consider a personnel matter. We also find that the written statement prepared in closing the session failed to satisfy the requirements of the Act.

**I**

**Complaint and Response**

According to your complaint, the Annapolis City Council Finance Committee, a public body created by the municipal charter, met in closed session on December 3, 2008, to discuss an audit of the City's Finance Department. Included with your complaint was a copy of an undated memorandum from the City Clerk to the Council announcing the session. The memorandum cited §10-508(a)(1)(ii)<sup>1</sup> as the statutory authority for the closed session and described the purpose of the session as “[t]o discuss the following topic: Performance Evaluation of a City Department.” Copies of the memorandum apparently were provided to the City Administrator, Public Information Officer, and the press.

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<sup>1</sup>All statutory references are to the Open Meetings Act, Title 10, Subtitle 5 of the State Government Article, Annotated Code of Maryland.

The complaint acknowledged that a public body may close a meeting to discuss specific personnel, but stated that a meeting cannot be closed for a “discussion about public issues, in particular a proposed audit.” The complaint also indicated that the intent of the personnel exception is “to protect the discussion of specific individuals, not a department in general as the ... memo implies.”

In a timely response on behalf of the Council’s Finance Committee, Stephen Kling, City Attorney, noted that the Committee had been evaluating the performance of a City department. On November 24, 2008, the Finance Committee held a special meeting at which time the Committee was unable to reach agreement, but the Committee “was aware that sensitive personnel information was available that might impact its decision.” On December 2, 2008, notice was given that the Finance Committee would meet on December 3 at 11:00 a.m. and that the meeting would be closed.

According to the response, “[t]his closed meeting was in furtherance of a larger discussion the Finance Committee had been having with respect to a City department. The committee sought to review and discuss what it regarded as sensitive information concerning the performance of a certain individual within the department under review.” Included with the response was a copy of a statement issued subsequent to the closed session describing the subject matter and actions taken during the course of the closed session and a copy of the session’s minutes.

## **II**

### **Analysis**

In order for us to evaluate the scope of discussions during the closed session December 3, 2008, we requested a copy of the minutes for the closed meeting. §10-502(c)(2)(ii)3. That document, along with other documentation required under the Open Meetings Act, was included with the response. We reviewed the minutes of the closed session, which normally remain confidential, even when submitted to the Compliance Board for review. §§10-502.5(c)(2)(iii) and 10-509(c)(3)(ii). However, here the minutes of the closed session provided no additional insight to the discussion that occurred beyond that provided in a document that we are told the City Council’s Finance Committee made public in accordance with §10-509(c)(2). Thus, aside from the participants in the meeting, we know only that the session was closed pursuant to §10-508(a)(1)(ii), that the subject was “performance of a

City Department,” and that a decision was made to fund a management audit subject to a maximum cost.

We recognize that, in a small department, there will be occasions where discussions concerning the performance of a key member of a department, a legitimate personnel matter, might be difficult to separate from the performance of the department itself. However, the Committee’s decision to identify the topic as focusing on the department clearly clouded the justification for closure in the eyes of the public. Furthermore, like every exception under §10-508(a), we must construe the personnel exception narrowly. §10-508(c).

From the record before us, we are unable to say how much of the discussion might qualify as a personnel matter. However, we see no reason that a line could not have reasonably been drawn, separating the discussion focusing on an individual’s performance from the decision to support a management audit. When the Committee turned its attention to supporting a management audit, and the maximum cost that the City might incur, the discussion no longer qualified as a personnel matter. Thus, to the extent discussion focused during the closed session on the decision to require a management audit, and the maximum expenditure to cover the audit, we find that the City Council’s Finance Committee violated the Open Meetings Act, §10-508(b).

We must also point out a procedural deficiency. Before closing a meeting under §10-508, certain procedures must be followed. In addition to a vote supporting closure, the presiding officer of the body is required to complete a written statement of the reason for closing the meeting, citing the applicable authority, and listing the topics to be discussed. §10-508(d)(2). Here the written statement indicated that the meeting was closed under §10-508(a)(1)(ii) and repeated the statutory language. However, no additional information was provided as part of the statement completed in advance of the closed session. While a public body is not expected to provide details that defeat the purpose of closure, we have repeatedly held that mere repetition of the statutory language is insufficient. It provides the public with no information in advance of the closed meeting to relate the intended purpose with the statutory exception justifying closure. *See, e.g., 5 OMCB Opinions* 33, 35-36 (2006). While the Act does not require any particular form be used in closing a meeting, we encourage the Finance Committee to consider using the full form suggested by the Attorney General which, if adequately completed, would ensure compliance with the Act. *See Office of Attorney General, Open Meetings Act Manual* App. C (6<sup>th</sup> ed. 2006).

**III**

**Conclusion**

In summary, we find that the Finance Committee violated the Open Meetings Act when it acted to provide a management audit and prescribe the maximum cost of the audit during a meeting closed to consider a personnel matter. We also find that the written statement prepared in closing the session failed to satisfy the requirements of the Act.

OPEN MEETINGS COMPLIANCE BOARD

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